

HOUSE BILL NO. 520

INTRODUCED BY FUREY, JOPEK, MAEDJE, GUTSCHE, VILLA, DICKENSON, HENRY, LENHART,
HAMILTON, CALLAHAN, BRANAE, NOONAN, DOWELL, WINDHAM, WANZENRIED, ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT INFORMATION OR STATEMENTS PROVIDED
BY A PERSON UNDER 21 YEARS OF AGE ~~WHILE SEEKING A MEDICAL EXAMINATION FOR OR~~
~~REPORTING AN ALLEGED CRIME MAY NOT BE USED IN A PROSECUTION UNDER THE MINOR IN~~
~~POSSESSION LAWS~~ TO A HEALTHCARE PROVIDER OR LAW ENFORCEMENT PERSONNEL REGARDING
AN ALLEGED OFFENSE AGAINST THAT PERSON UNDER THE CRIMINAL LAWS RELATING TO SEXUAL
OFFENSES AGAINST A PERSON MAY NOT BE USED IN A PROSECUTION OF THAT PERSON FOR THE
OFFENSE OF BEING A MINOR IN POSSESSION OF AN INTOXICATING SUBSTANCE; PROVIDING THAT
THE SAME PROTECTION EXTENDS TO A PERSON WHO HELPS THE VICTIM OBTAIN MEDICAL OR OTHER
ASSISTANCE OR REPORT THE OFFENSE TO LAW ENFORCEMENT PERSONNEL; AMENDING SECTION
45-5-624, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-624, MCA, is amended to read:

**"45-5-624. Unlawful attempt to purchase or possession of intoxicating substance -- interference
with sentence or court order.** (1) A person under 21 years of age commits the offense of possession of an
intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating
substance. A person does not commit the offense if the person consumes or gains possession of the beverage
because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is
necessary to possess alcoholic beverages.

(2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age
who is convicted under this section:

(i) for the first offense, shall be fined an amount not less than \$100 and not to exceed \$300 and:

(A) shall be ordered to perform 20 hours of community service;

(B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and
pay all costs of participation in a community-based substance abuse information course that meets the

1 requirements of subsection (9), if one is available; and

2 (C) if the person has a driver's license, must have the license confiscated by the court for 30 days,
3 except as provided in subsection (2)(b);

4 (ii) for a second offense, shall be fined an amount not less than \$200 and not to exceed \$600 and:

5 (A) shall be ordered to perform 40 hours of community service;

6 (B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and
7 pay all costs of participation in a community-based substance abuse information course that meets the
8 requirements of subsection (9), if one is available;

9 (C) if the person has a driver's license, must have the license confiscated by the court for 6 months,
10 except as provided in subsection (2)(b); and

11 (D) shall be required to complete a chemical dependency assessment and treatment, if recommended,
12 as provided in subsection (8);

13 (iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$900,
14 shall be ordered to perform 60 hours of community service, shall be ordered, and the person's parent or parents
15 or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance
16 abuse information course that meets the requirements of subsection (9), if one is available, and shall be required
17 to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8).
18 If the person has a driver's license, the court shall confiscate the license for 6 months, except as provided in
19 subsection (2)(b).

20 (b) If the convicted person fails to complete the community-based substance abuse course and has a
21 driver's license, the court shall order the license suspended for 3 months for a first offense, 9 months for a
22 second offense, and 12 months for a third or subsequent offense.

23 (c) The court shall retain jurisdiction for up to 1 year to order suspension of a license under subsection
24 (2)(b).

25 (3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating
26 substance:

27 (a) for a first offense, shall be fined an amount not to exceed \$200, and may be ordered to perform
28 community service;

29 (b) for a second offense, shall be fined an amount not to exceed \$200 and may be ordered to perform
30 community service;

1 (c) for a third or subsequent offense, shall be fined an amount not to exceed \$500 and:

2 (i) may be ordered to perform community service;

3 (ii) shall be ordered to complete an alcohol information course at an alcohol treatment program that
4 meets the requirements of subsection (9), which may, in the sentencing court's discretion and upon
5 recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; and

6 (iii) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

7 (4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating
8 substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt
9 to purchase an intoxicating substance shall be fined an amount not to exceed \$150 if the person was under 21
10 years of age at the time that the offense was committed and may be ordered to perform community service.

11 (5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18
12 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for
13 failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth
14 in need of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

15 (6) A person commits the offense of interference with a sentence or court order if the person purposely
16 or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court
17 disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or
18 imprisoned in the county jail for 10 days, or both.

19 (7) A conviction or youth court adjudication under this section must be reported by the court to the
20 department of public health and human services if treatment is ordered under subsection (8).

21 (8) (a) A person convicted of a second or subsequent offense of possession of an intoxicating
22 substance shall be ordered to complete a chemical dependency assessment.

23 (b) The assessment must be completed at a treatment program that meets the requirements of
24 subsection (9) and must be conducted by a licensed addiction counselor. The person may attend a program of
25 the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall pay
26 the cost of the assessment and any resulting treatment.

27 (c) The assessment must describe the person's level of abuse or dependency, if any, and contain a
28 recommendation as to the appropriate level of treatment if treatment is indicated. A person who disagrees with
29 the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed
30 addiction counselor or program that meets the requirements of subsection (9).

(d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem, or both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon the determination, the court shall order the appropriate level of treatment, if any. If more than one counselor makes a determination, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(e) Each counselor providing treatment shall, at the commencement of the course of treatment, notify the court that the person has been enrolled in a chemical dependency treatment program. If the person fails to attend the treatment program, the counselor shall notify the court of the failure.

(f) The court shall report to the department of public health and human services the name of any person who is convicted under this section. The department of public health and human services shall maintain a list of those persons who have been convicted under this section. This list must be made available upon request to peace officers and to any court.

(9) (a) A community-based substance abuse information course required under subsection (2)(a)(i)(B), (2)(a)(ii)(B), or (2)(a)(iii) must be:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(b) An alcohol information course required under subsection (3)(c)(ii) must be provided at an alcohol treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(c) A chemical dependency assessment required under subsection (8) must be completed at a treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

~~(10) Information provided or statements made by a person under 21 years of age while seeking a medical examination as a result of or filing a complaint with a law enforcement agency regarding an alleged offense under Title 45, chapter 5, may not be used in a prosecution under this section. The protections of this subsection apply to any person who assists the alleged victim in seeking a medical examination or filing a complaint.~~

(10) INFORMATION PROVIDED OR STATEMENTS MADE BY A PERSON UNDER 21 YEARS OF AGE TO A HEALTH CARE PROVIDER OR LAW ENFORCEMENT PERSONNEL REGARDING AN ALLEGED OFFENSE AGAINST THAT PERSON UNDER TITLE 45, CHAPTER 5, PART 5, MAY NOT BE USED IN A PROSECUTION OF THAT PERSON UNDER THIS SECTION. THIS SUBSECTION'S PROTECTION ALSO EXTENDS TO A PERSON WHO HELPS THE VICTIM OBTAIN MEDICAL OR OTHER ASSISTANCE OR REPORT THE OFFENSE TO LAW ENFORCEMENT PERSONNEL. (See compiler's comments for contingent termination of certain text.)

NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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